

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

14 CV 6209

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CHARLES VRAZEL,

**J SPATT
MJ LINDSAY**

Plaintiff,

-against-

LONG ISLAND RAIL ROAD COMPANY

Defendant.

**PLAINTIFF'S
OPPOSITION
To MOTION for
SUMMARY
JUDGMENT**

LONG ISLAND RAIL ROAD COMPANY,

Third-Party Plaintiff,

-against-

**SCHEIDT & BACHMAN GMBH and SCHEIDT &
BACHMAN USA, INC.,**

Third-Party Defendants,

-----X
STATE OF NEW YORK, COUNTY OF NEW YORK) ss.:

VALERIE J. LAURIELLO, an attorney admitted to practice law before the Courts in the State of New York, affirms the truth of the following under penalties of perjury:

1. Valerie J. Lauriello affirms the following as true under penalty of perjury.
2. I am an attorney duly admitted to the practice of law in the State of New York and the United States District Court, Eastern District of New York. I am a member of the firm Flynn & Lauriello PLLC, Attorney of Record for the plaintiff.
3. I respectfully submit this affirmation in opposition to third defendant Scheidt & Bachman GMBH and Scheidt & Bachman USA, Inc., hereinafter, collectively,

"S&B", motion for partial summary judgment against the defendant/third-party plaintiff the Long Island Rail Road Company, hereinafter, "LIRR".

4. LIRR opposes the motion by "S&B".
5. Plaintiff's cause of action against the LIRR is predicated on 45 USC Section 51 *et seq.*, the FEDERAL EMPLOYERS' LIABILITY ACT.
6. Succinctly, defendant "LIRR" and Third-party defendant "S&B" allege that plaintiff was negligent in causing the subject accident.
7. The FELA claim is not before the Court on the summary judgment motion.
8. The FELA precludes a defenses of assumption of risk 45 USC Section 54.
9. The FELA allows a defense of comparative fault 45 USC Section 53.
10. The gratuitous and spurious allegations that plaintiff was "negligent" are irrelevant to the "S&B" motion for summary judgment against the "LIRR".
11. Plaintiff respectfully requests that since the FELA Action is not at bar on the summary judgment motion before the Court, that the issues of plaintiff's fault, if any, be preserved for jury trial of plaintiff's FELA, and the law applicable thereto.

Dated: May 13, 2016
New York, New York

FLYNN & LAURIELLO PLLC
Attorneys at Law

BY 

VALERIE J. LAURIELLO (VL6192)

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AFFIRMATION OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

The undersigned affirms the following as true under the penalty of perjury:

I am an attorney at law admitted to practice in this Court and the State of New York.

On May 13, 2016, I served the annexed **PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**,

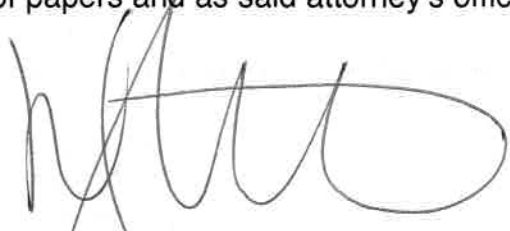
upon,

MARK HOFFER, ESQ
ATTORNEY FOR DEFENDANT LIRR
LONG ISLAND RAIL ROAD
LAW DEPT – 4TH FLOOR
JAMAICA STATION
JAMAICA, NY 11435

GEORGE MCCALL ESQ
WILLIAM J. BRENNAN ESQ
SEDGWICK LLP
225 LIBERTY STREET, 28TH FL
NEW YORK, NY 10281

by mailing a true copy thereof by regular mail from the US Post Office deposit box at 5 Penn Plaza, 23RD Floor, NY, NY 10001, on the below mentioned date, addressed to the above attorneys at the addresses above shown. Said addresses were designated by said attorneys for the purpose of service of papers and as said attorney's office address.

Dated: May 13, 2016
New York, New York



VALERIE J. LAURIELLO
ATTORNEY AT LAW

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SCHEIDT & BACHMAN GMBH AND SCHEIDT &
BACHMAN USA, INC.,

Third-Party Defendant.

PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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